

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 2269**  
**OFFERED BY MR. THOMAS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Retirement Security  
3 Advice Act of 2001”.

**4 SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE**  
**5 PROVISION OF INVESTMENT ADVICE.**

6       (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
7 INCOME SECURITY ACT OF 1974.—

8           (1) IN GENERAL.—Section 408(b) of the Em-  
9 ployee Retirement Income Security Act of 1974 (29  
10 U.S.C. 1108(b)) is amended by adding at the end  
11 the following new paragraph:

12           “(14) If the requirements of subsection (g) are  
13 met—

14           “(A) the provision of investment advice re-  
15 ferred to in section 3(21)(A)(ii) provided by a  
16 fiduciary adviser (as defined in subsection  
17 (g)(4)(A)) to an employee benefit plan or to a  
18 participant or beneficiary of an employee ben-  
19 efit plan,

1           “(B) the sale, acquisition, or holding of se-  
2           curities or other property (including any lending  
3           of money or other extension of credit associated  
4           with the sale, acquisition, or holding of securi-  
5           ties or other property) pursuant to such invest-  
6           ment advice, and

7           “(C) the direct or indirect receipt of fees  
8           or other compensation by the fiduciary adviser  
9           or an affiliate thereof (or any employee, agent,  
10          or registered representative of the fiduciary ad-  
11          viser or affiliate) in connection with the provi-  
12          sion of such investment advice.”.

13          (2) REQUIREMENTS.—Section 408 of such Act  
14          is amended further by adding at the end the fol-  
15          lowing new subsection:

16          “(g)(1) The requirements of this subsection are met  
17          in connection with the provision of advice referred to in  
18          section 3(21)(A)(ii), provided to an employee benefit plan  
19          or a participant or beneficiary of an employee benefit plan  
20          by a fiduciary adviser with respect to such plan, in connec-  
21          tion with any sale or acquisition of a security or other  
22          property for purposes of investment of amounts held by  
23          such plan, if—

24                 “(A) in the case of the initial provision of such  
25          advice with regard to a security or other property,

1 by such fiduciary adviser to such plan, participant,  
2 or beneficiary, the fiduciary adviser provides to the  
3 recipient of such advice, at the time of or before the  
4 initial provision of such advice, a clear and con-  
5 spicuous description, in writing (including by means  
6 of electronic communication), of—

7 “(i) all fees or other compensation relating  
8 to such advice that the fiduciary adviser or any  
9 affiliate thereof is to receive (including com-  
10 pensation provided by any third party) in con-  
11 nection with the provision of such advice or in  
12 connection with such acquisition or sale,

13 “(ii) any material affiliation or contractual  
14 relationship of the fiduciary adviser or affiliates  
15 thereof in such security or other property,

16 “(iii) any limitation placed on the scope of  
17 the investment advice to be provided by the fi-  
18 duciary adviser with respect to any such sale or  
19 acquisition, and

20 “(iv) the types of services offered by the fi-  
21 duciary advisor in connection with the provision  
22 of investment advice by the fiduciary adviser,

23 “(B) in the case of the initial or any subsequent  
24 provision of such advice to such plan, participant, or  
25 beneficiary, the fiduciary adviser, throughout the 1-

1 year period following the provision of such advice,  
2 maintains the information described in clauses (i)  
3 through (iv) of subparagraph (A) in currently accu-  
4 rate form for availability, upon request and without  
5 charge, to the recipient of such advice,

6 “(C) the fiduciary adviser provides appropriate  
7 disclosure, in connection with any such acquisition  
8 or sale, in accordance with all applicable securities  
9 laws,

10 “(D) such acquisition or sale occurs solely at  
11 the direction of the recipient of such advice,

12 “(E) the compensation received by the fiduciary  
13 adviser and affiliates thereof in connection with such  
14 acquisition or sale is reasonable, and

15 “(F) the terms of such acquisition or sale are  
16 at least as favorable to such plan as an arm’s length  
17 transaction would be.

18 “(2) A fiduciary adviser referred to in paragraph (1)  
19 who has provided advice referred to in such paragraph  
20 shall, for a period of not less than 6 years after the provi-  
21 sion of such advice, maintain any records necessary for  
22 determining whether the requirements of the preceding  
23 provisions of this subsection and of subsection (b)(14)  
24 have been met. A transaction prohibited under section 406  
25 shall not be considered to have occurred solely because the

1 records are lost or destroyed prior to the end of the 6-  
2 year period due to circumstances beyond the control of the  
3 fiduciary adviser.

4 “(3)(A) Subject to subparagraph (B), a plan sponsor  
5 or other person who is a fiduciary shall not be treated  
6 as failing to meet the requirements of this part solely by  
7 reason of the provision of investment advice referred to  
8 in section 3(21)(A)(ii) (or solely by reason of contracting  
9 for or otherwise arranging for the provision of such invest-  
10 ment advice), if—

11 “(i) such advice is provided by a fiduciary ad-  
12 viser pursuant to an arrangement between such plan  
13 sponsor or other fiduciary and such fiduciary adviser  
14 for the provision by such fiduciary adviser of invest-  
15 ment advice referred to in such section, and

16 “(ii) the terms of such arrangement require  
17 compliance by the fiduciary adviser with the require-  
18 ments of this subsection.

19 “(B) Nothing in subparagraph (A) shall be construed  
20 to exempt a plan sponsor or other person who is a fidu-  
21 ciary from any requirement of this part for the prudent  
22 selection and periodic review of a fiduciary adviser with  
23 whom the plan sponsor or other person enters into an ar-  
24 rangement for the provision of advice referred to in section  
25 3(21)(A)(ii). Such plan sponsor or other person who is a

1 fiduciary has no duty under this part to monitor the spe-  
2 cific investment advice given by the fiduciary adviser to  
3 any particular recipient of such advice.

4 “(C) Nothing in this part shall be construed to pre-  
5 clude the use of plan assets to pay for reasonable expenses  
6 in providing investment advice referred to in section  
7 3(21)(A)(ii).

8 “(4) For purposes of this subsection and subsection  
9 (b)(14)—

10 “(A) The term ‘fiduciary adviser’ means, with  
11 respect to a plan, a person who is a fiduciary of the  
12 plan by reason of the provision of investment advice  
13 by such person to the plan or to a participant or  
14 beneficiary and who is—

15 “(i) registered as an investment adviser  
16 under the Investment Advisers Act of 1940 (15  
17 U.S.C. 80b–1 et seq.) or under the laws of the  
18 State in which the fiduciary maintains its prin-  
19 cipal office and place of business,

20 “(ii) a bank or similar financial institution  
21 referred to in section 408(b)(4),

22 “(iii) an insurance company qualified to do  
23 business under the laws of a State,

1 “(iv) a person registered as a broker or  
2 dealer under the Securities Exchange Act of  
3 1934 (15 U.S.C. 78a et seq.),

4 “(v) an affiliate of a person described in  
5 any of clauses (i) through (iv), or

6 “(vi) an employee, agent, or registered rep-  
7 resentative of a person described in any of  
8 clauses (i) through (v).

9 “(B) The term ‘affiliate’ means an affiliated  
10 person, as defined in section 2(a)(3) of the Invest-  
11 ment Company Act of 1940 (15 U.S.C. 80a-  
12 2(a)(3)).

13 “(C) The term ‘registered representative’ means  
14 a person described in section 3(a)(18) of the Securi-  
15 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(18))  
16 or section 202(a)(17) of the Investment Advisers Act  
17 of 1940 (15 U.S.C. 80b-2(a)(17)).”.

18 (b) AMENDMENTS TO THE INTERNAL REVENUE  
19 CODE OF 1986.—

20 (1) EXEMPTION FROM PROHIBITED TRANS-  
21 ACTIONS.—Subsection (d) of section 4975 of the In-  
22 ternal Revenue Code of 1986 (relating to exemptions  
23 from tax on prohibited transactions) is amended—

24 (A) in paragraph (14), by striking “or” at  
25 the end;

1 (B) in paragraph (15), by striking the pe-  
2 riod at the end and inserting “; or”; and

3 (C) by adding at the end the following new  
4 paragraph:

5 “(16) any transaction described in subsection  
6 (f)(7)(A) in connection with the provision of invest-  
7 ment advice described in subsection (e)(3)(B), in  
8 any case in which—

9 “(A) the investment of assets of the plan  
10 is subject to the direction of plan participants  
11 or beneficiaries,

12 “(B) the advice is provided to the plan or  
13 a participant or beneficiary of the plan by a fi-  
14 duciary adviser in connection with any sale, ac-  
15 quisition, or holding of a security or other prop-  
16 erty for purposes of investment of plan assets,  
17 and

18 “(C) the requirements of subsection  
19 (f)(7)(B) are met in connection with the provi-  
20 sion of the advice.”

21 (2) ALLOWED TRANSACTIONS AND REQUIRE-  
22 MENTS.—Subsection (f) of such section 4975 (relat-  
23 ing to other definitions and special rules) is amended  
24 by adding at the end the following new paragraph:



1           “(7) PROVISIONS RELATING TO INVESTMENT  
2       ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

3           “(A) TRANSACTIONS ALLOWABLE IN CON-  
4       NECTION WITH INVESTMENT ADVICE PROVIDED  
5       BY FIDUCIARY ADVISERS.—The transactions re-  
6       ferred to in subsection (d)(16), in connection  
7       with the provision of investment advice by a fi-  
8       duciary adviser, are the following:

9           “(i) the provision of the advice to the  
10       plan, participant, or beneficiary;

11          “(ii) the sale, acquisition, or holding  
12       of a security or other property (including  
13       any lending of money or other extension of  
14       credit associated with the sale, acquisition,  
15       or holding of a security or other property)  
16       pursuant to the advice; and

17          “(iii) the direct or indirect receipt of  
18       fees or other compensation by the fiduciary  
19       adviser or an affiliate thereof (or any em-  
20       ployee, agent, or registered representative  
21       of the fiduciary adviser or affiliate) in con-  
22       nection with the provision of the advice or  
23       in connection with a sale, acquisition, or  
24       holding of a security or other property pur-  
25       suant to the advice.

1           “(B) REQUIREMENTS RELATING TO PROVI-  
2           SION OF INVESTMENT ADVICE BY FIDUCIARY  
3           ADVISERS.—The requirements of this subpara-  
4           graph (referred to in subsection (d)(16)(C)) are  
5           met in connection with the provision of invest-  
6           ment advice referred to in subsection (e)(3)(B),  
7           provided to a plan or a participant or bene-  
8           ficiary of a plan by a fiduciary adviser with re-  
9           spect to the plan in connection with any sale,  
10          acquisition, or holding of a security or other  
11          property for purposes of investment of amounts  
12          held by the plan, if—

13               “(i) in the case of the initial provision  
14               of the advice with regard to the security or  
15               other property by the fiduciary adviser to  
16               the plan, participant, or beneficiary, the fi-  
17               ducary adviser provides to the recipient of  
18               the advice, at a time reasonably contem-  
19               poraneous with the initial provision of the  
20               advice, a written notification (which may  
21               consist of notification by means of elec-  
22               tronic communication)—

23               “(I) of all fees or other com-  
24               pensation relating to the advice that  
25               the fiduciary adviser or any affiliate

1           thereof is to receive (including com-  
2           pensation provided by any third  
3           party) in connection with the provi-  
4           sion of the advice or in connection  
5           with the sale, acquisition, or holding  
6           of the security or other property,

7                   “(II) of any material affiliation  
8                   or contractual relationship of the fidu-  
9                   ciary adviser or affiliates thereof in  
10                  the security or other property,

11                   “(III) of any limitation placed on  
12                   the scope of the investment advice to  
13                   be provided by the fiduciary adviser  
14                   with respect to any such sale, acquisi-  
15                   tion, or holding of a security or other  
16                   property,

17                   “(IV) of the types of services  
18                   provided by the fiduciary advisor in  
19                   connection with the provision of in-  
20                   vestment advice by the fiduciary ad-  
21                   viser, and

22                   “(V) that the adviser is acting as  
23                   a fiduciary of the plan in connection  
24                   with the provision of the advice,

1           “(ii) the fiduciary adviser provides ap-  
2           propriate disclosure, in connection with the  
3           sale, acquisition, or holding of the security  
4           or other property, in accordance with all  
5           applicable securities laws,

6           “(iii) the sale, acquisition, or holding  
7           occurs solely at the direction of the recipi-  
8           ent of the advice,

9           “(iv) the compensation received by the  
10          fiduciary adviser and affiliates thereof in  
11          connection with the sale, acquisition, or  
12          holding of the security or other property is  
13          reasonable, and

14          “(v) the terms of the sale, acquisition,  
15          or holding of the security or other property  
16          are at least as favorable to the plan as an  
17          arm’s length transaction would be.

18          “(C) STANDARDS FOR PRESENTATION OF  
19          INFORMATION.—The notification required to be  
20          provided to participants and beneficiaries under  
21          subparagraph (B)(i) shall be written in a clear  
22          and conspicuous manner and in a manner cal-  
23          culated to be understood by the average plan  
24          participant and shall be sufficiently accurate  
25          and comprehensive to reasonably apprise such

1 participants and beneficiaries of the information  
2 required to be provided in the notification.

3 “(D) EXEMPTION CONDITIONED ON MAK-  
4 ING REQUIRED INFORMATION AVAILABLE ANNU-  
5 ALLY, ON REQUEST, AND IN THE EVENT OF MA-  
6 TERIAL CHANGE.—The requirements of sub-  
7 paragraph (B)(i) shall be deemed not to have  
8 been met in connection with the initial or any  
9 subsequent provision of advice described in sub-  
10 paragraph (B) to the plan, participant, or bene-  
11 ficiary if, at any time during the provision of  
12 advisory services to the plan, participant, or  
13 beneficiary, the fiduciary adviser fails to main-  
14 tain the information described in subclauses (I)  
15 through (IV) of subparagraph (B)(i) in cur-  
16 rently accurate form and in the manner re-  
17 quired by subparagraph (C), and fails—

18 “(i) to provide, without charge, such  
19 currently accurate information to the re-  
20 cipient of the advice no less than annually,

21 “(ii) to make such currently accurate  
22 information available, upon request and  
23 without charge, to the recipient of the ad-  
24 vice, and

1                   “(iii) in the event of a material  
2                   change to the information described in  
3                   subclauses (I) through (IV) of subpara-  
4                   graph (B)(i), to provide, without charge,  
5                   such currently accurate information to the  
6                   recipient of the advice at a time reasonably  
7                   contemporaneous to the material change in  
8                   information.

9                   “(E) MAINTENANCE FOR 6 YEARS OF EVI-  
10                  DENCE OF COMPLIANCE.—A fiduciary adviser  
11                  referred to in subparagraph (B) who has pro-  
12                  vided advice referred to in such subparagraph  
13                  shall, for a period of not less than 6 years after  
14                  the provision of the advice, maintain any  
15                  records necessary for determining whether the  
16                  requirements of the preceding provisions of this  
17                  paragraph and of subsection (d)(16) have been  
18                  met. A transaction prohibited under subsection  
19                  (c)(1) shall not be considered to have occurred  
20                  solely because the records are lost or destroyed  
21                  prior to the end of the 6-year period due to cir-  
22                  cumstances beyond the control of the fiduciary  
23                  adviser.

24                  “(E) DEFINITIONS.—For purposes of this  
25                  paragraph and subsection (d)(16)—

1 “(i) FIDUCIARY ADVISER.—The term  
2 ‘fiduciary adviser’ means, with respect to a  
3 plan, a person who is a fiduciary of the  
4 plan by reason of the provision of invest-  
5 ment advice by the person to the plan or  
6 to a participant or beneficiary and who  
7 is—

8 “(I) registered as an investment  
9 adviser under the Investment Advisers  
10 Act of 1940 (15 U.S.C. 80b–1 et seq.)  
11 or under the laws of the State in  
12 which the fiduciary maintains its prin-  
13 cipal office and place of business,

14 “(II) a bank or similar financial  
15 institution referred to in subsection  
16 (d)(4),

17 “(III) an insurance company  
18 qualified to do business under the  
19 laws of a State,

20 “(IV) a person registered as a  
21 broker or dealer under the Securities  
22 Exchange Act of 1934 (15 U.S.C. 78a  
23 et seq.),

1 “(V) an affiliate of a person de-  
2 scribed in any of subclauses (I)  
3 through (IV), or

4 “(VI) an employee, agent, or reg-  
5 istered representative of a person de-  
6 scribed in any of subclauses (I)  
7 through (V) who satisfies the require-  
8 ments of applicable insurance, bank-  
9 ing, and securities laws relating to the  
10 provision of the advice.

11 “(ii) AFFILIATE.—The term ‘affiliate’  
12 of another entity means an affiliated per-  
13 son of the entity (as defined in section  
14 2(a)(3) of the Investment Company Act of  
15 1940 (15 U.S.C. 80a-2(a)(3))).

16 “(iii) REGISTERED REPRESENTA-  
17 TIVE.—The term ‘registered representa-  
18 tive’ of another entity means a person de-  
19 scribed in section 3(a)(18) of the Securi-  
20 ties Exchange Act of 1934 (15 U.S.C.  
21 78c(a)(18)) (substituting the entity for the  
22 broker or dealer referred to in such sec-  
23 tion) or a person described in section  
24 202(a)(17) of the Investment Advisers Act  
25 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-



1                   stituting the entity for the investment ad-  
2                   viser referred to in such section).”

3 **SEC. 3. EFFECTIVE DATE.**

4       The amendments made by this Act shall apply with  
5   respect to advice referred to in section 3(21)(A)(ii) of the  
6   Employee Retirement Income Security Act of 1974 or sec-  
7   tion 4975(e)(3)(B) of the Internal Revenue Code of 1986  
8   provided on or after January 1, 2002.